

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of HENDERSON/FORD, Minors.

UNPUBLISHED

June 19, 2014

No. 319166

Kent Circuit Court

Family Division

LC Nos. 12-051599-NA;

12-051600-NA

Before: RONAYNE KRAUSE, P.J., and HOEKSTRA and WHITBECK, JJ.

PER CURIAM.

Respondent-mother, A. Johnson, appeals as of right the trial court's order terminating her parental rights to her two minor children under MCL 712A.19b(3)(c)(i) (parent not reasonably likely to rectify the conditions that led to adjudication) and (g) (failure to provide proper care and custody). We affirm.

I. FACTS

A. THE TRIAL COURT'S ASSUMPTION OF JURISDICTION

Johnson's daughter lived with Johnson in Michigan. Johnson's son lived with A. Ford, his father, in Illinois. In February 2012, Ford left the son in Michigan for a visit with Johnson.

In May 2012, the Department removed the children. The Department alleged that police arrived at Johnson's home and found that the home was "trashed," with shattered glass, a microwave, and cooking devices on the floor. Johnson was heavily intoxicated. Johnson's daughter reported that Johnson's then-boyfriend had held a gun to Johnson's head, and that Johnson and the boyfriend were constantly fighting. The Department alleged that Johnson struggled with mental illnesses, including Attention Deficit Hyperactivity Disorder, depression, bipolar disorder, and anxiety.

Johnson later admitted these allegations. The trial court placed Johnson's son with Ford, who returned to Illinois. The trial court placed Johnson's daughter in foster care.

B. JOHNSON'S PROGRESS

In June 2012, Kaitlyn Schiefer, the children's foster care case manager, testified that Johnson missed her appointment for a psychological evaluation. Johnson attended a substance

abuse screen, which was positive for only three of Johnson's four psychotropic medications. Schiefer testified that Johnson had been evicted from her home, moved into a homeless shelter, and was then "kicked out" of the shelter after testing positive for marijuana, and moved to Illinois to live with a friend.

At a review hearing on July 11, 2012, Schiefer was concerned that Johnson was missing supervised parenting visits, which caused anxiety to her daughter. Schiefer testified that Johnson and her daughter were closely bonded, but had a "peer-like relationship" in which Johnson discussed adult matters. Schiefer testified that she had referred Johnson for domestic violence and housing services.

On July 18, 2012, the Department petitioned to remove Johnson's son from Ford's home. According to the Department, Ford knew that Johnson could not live with him and stated that Johnson was not living at his home. On July 16, 2012, police officers went to Ford's home to check on the son, and saw Johnson leave through the back door. Police arrested Johnson on an outstanding warrant from Iowa. Johnson and Ford later admitted to these allegations. The trial court ordered the Department to place Johnson's son in the same foster home as Johnson's daughter.

According to Schiefer, Johnson was convicted of third-degree home invasion in Iowa. Schiefer testified that Johnson admitted that she was addicted to opiates, and was admitted into a rehabilitation and work release program. During treatment, Johnson was late to substance abuse treatment meetings and failed to attend one meeting. Schiefer testified that Johnson's telephone visitation was mostly appropriate, but on some occasions Johnson had upset her daughter during visits and Schiefer had to tell Johnson not to discuss her mental health issues with her daughter.

Schiefer testified that the son acted out in the foster home. Matthew Clark, the son's psychologist, testified that he had diagnosed the son with Attention Deficit Hyperactivity Disorder and Oppositional Defiant Disorder. Clark testified that Johnson's son suffered from severe psychological trauma or other major challenges. Clark recommended that the son receive therapy and consistent parental guidance.

In April 2013, Schiefer testified that Johnson had tested very high for her prescription medication and was caught with 34 pills for which she did not have a prescription. Johnson was sent to jail and could no longer participate in the rehabilitation program. Schiefer testified that Johnson attended Alcoholics Anonymous and Narcotics Anonymous meetings in jail, and continued to participate in weekly telephone calls with the children.

In June 2013, Schiefer testified that Ford was arrested for violating a personal protective order by visiting Johnson in jail. Ford told Schiefer that Johnson had invited him to visit her. Ford turned over a "pile" of letters that Johnson had written him. According to Schiefer, in the letters, Johnson stated that she wanted to be a family with Ford and encouraged him not to disclose their relationship to the Department.

On August 7, 2013, the Department petitioned to terminate Johnson's parental rights. The trial court held a permanency planning hearing in September 2013. According to Schiefer, Johnson told Schiefer that she wanted to return to Michigan to participate in services when she

was released from jail. Schiefer told her that the agency would purchase a bus ticket for her and told her to call the agency on August 12, 2013. Johnson was released from jail on August 10, 2013, but failed to call the agency. Johnson later told Schiefer that she was living with her sister in Illinois.

Schiefer referred Johnson to an agency that would provide Johnson with mental health services and domestic violence counseling in Illinois. Schiefer told Johnson that the Department would pay for charges for the services, but Johnson said she would rather wait until she was on Medicaid to begin services. Johnson did not begin services.

According to Schiefer, Johnson's sister later called and informed Schiefer that she no longer wanted Johnson to live with her. Johnson returned to Michigan on September 7 or 8, 2013, and moved in with her brother. Johnson posted on her Facebook page that she consumed alcoholic beverages while traveling back to Michigan. Schiefer testified that, after Johnson returned to Michigan, Johnson tested positive for opiates, but she had not been prescribed opiates for months and did not explain why she tested positive.

C. THE TERMINATION HEARING

Johnson did not attend the termination hearing in October 2013. At the hearing, Schiefer testified that Johnson continued to have problems with income, housing, emotional stability, domestic relations, substance abuse, and parenting skills. Schiefer testified that Johnson had not completed parenting class after she was released from prison. Schiefer testified that Johnson was not emotionally stable, and placed her own emotional needs before the children's emotional needs during telephone visitations. Schiefer testified that Johnson's telephone contact with the children concerned her because of the topics Johnson chose to discuss.

Schiefer testified that she was concerned that Johnson continued to test positive for substance, used alcohol, and failed to attend Alcoholics Anonymous or Narcotics Anonymous. Schiefer testified that, on September 29, 2013, Johnson posted a video on Facebook that she said showed her and her brother "drunk, riding bikes at 3:00 a.m." Schiefer reported that Johnson canceled her parenting time on September 30, 2013.

Regarding the children's best interests, Schiefer testified that the children were doing very well in the foster home. Schiefer testified that Johnson's daughter and son both had significant mental health needs that resulted from trauma. Schiefer testified that the children's counselors told her that the children needed an emotionally stable parent who was able to provide structure, consistent boundaries, and discipline.

Schiefer testified that the daughter was extremely bright and mature for her age. Schiefer testified that the son had made significant progress in the foster home. However, both children still had challenges. Schiefer testified that Johnson's daughter had begun expressing "increasing anxiety with the unknown" and wanted permanency. Schiefer testified that the daughter told her that she wanted to stay in the foster home, and that the son had asked if his foster parents could go with him if he was returned to Johnson's care. Schiefer testified that the children's foster parents were interested in adopting the children.

D. THE TRIAL COURT'S FINDINGS AND CONCLUSIONS

The trial court found that the children had been in care for almost 17 months and 15 months, respectively. It found that Johnson had not participated in counseling or therapy to address her mental stability issues. It found that Johnson continued to have substance abuse issues and lacked appropriate housing. The trial court found that Johnson's conduct after her release from jail was concerning. It found that Johnson chose to not return immediately to visit the children, even though she had not seen them for a long time.

The trial court found that it had given Johnson a significant period of time to show that she could make progress, but she had failed to make progress. It found that Johnson was not interested in participating in services, and was not serious about making changes so that the children could be returned to her care. The trial court found that the Department proved MCL 712A.19(b)(3)(c)(i) and (g) by clear and convincing evidence.

Considering the children's best interests, the trial court found that the children were placed together and that their placement was going well. The trial court found that Johnson's visitation history was "pretty bad" after her release from jail and that the children's bond with the foster parents was now stronger than their bond with Johnson. The trial court found that the son was making progress, and the daughter was struggling but working on her issues. The trial court found that the children required consistency, stability, and permanency, and it found that the foster parents were willing to adopt the children. The trial court determined that terminating Johnson's parental rights was in the children's best interests.

II. STATUTORY GROUNDS

A. STANDARD OF REVIEW

This Court reviews for clear error the trial court's factual findings and ultimate determinations on the statutory grounds for termination.¹

B. LEGAL STANDARDS

MCL 712A.19b(3)(c)(i) provides that the trial court may terminate a parent's rights if there is clear and convincing evidence that:

[t]he conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

The trial court appropriately terminates a parent's rights under this statutory ground when the conditions that brought the children into foster care continue to exist, despite that the parent has had time to make changes and the opportunity to take advantage of a variety of services.²

¹ MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

MCL 712A.19b(3)(g) provides that the trial court may terminate a parent's rights if

[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

"A parent's failure to participate in and benefit from a service plan is evidence that the parent will not be able to provide a child with proper care and custody."³

C. APPLYING THE STANDARDS

Johnson asserts that the trial court erred because it should have given her additional time to demonstrate that she could comply with her service plan. We disagree.

Children should not be forced to wait for long periods in foster care for "the mere possibility of a radical change in [the parent's] life."⁴ Here, the conditions that brought the children into care were Johnson's substance abuse, mental illness, and lack of treatment regarding domestically abusive relationships. Johnson almost entirely failed to participate in her service plan or address these conditions. Johnson's behavior while her children were in foster care supported the trial court's finding that Johnson had no desire to comply with her service plan.

Johnson failed to participate in the substance abuse portion of her service plan. The trial court required Johnson to regularly attend Alcoholics Anonymous and Narcotics Anonymous meetings. Schiefer testified that, after Johnson was released from jail, she no longer participated in those programs. Johnson also continued to abuse substances, as illustrated by her Facebook posts and her positive test for opiates in September 2013. As late as September 30, 2013, when Johnson cancelled her parenting time after drinking into the early morning, Johnson continued to allow her substance abuse to interfere with her ability to parent her children.

Johnson also failed to participate in the mental health portion of her service plan. Schiefer testified that Johnson was not participating in counseling, and that Johnson refused to engage in counseling after she was released from jail because she preferred to wait for Medicaid, despite that the Department offered to pay the costs of counseling. Schiefer testified that Mark Olexa, Johnson's counselor, informed her that Johnson's emotional stability remained an issue and she was not "anywhere near stable enough to parenting children." Schiefer testified that Johnson placed her own emotional needs before the children's. For instance, Johnson continued to discuss her mental health with her daughter even after Schiefer told Johnson that this upset the daughter.

² See *In re Powers Minors*, 244 Mich App 111, 119; 624 NW2d 472 (2000); *In re Williams*, 286 Mich App 253, 272-273; 779 NW2d 286 (2009).

³ *In re White*, 303 Mich App 701, 710; ___ NW2d ___ (2014). See *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003).

⁴ *Williams*, 286 Mich App at 273.

Further, Johnson failed to complete parenting classes. Johnson failed to consistently participate in her parenting time. Johnson failed to obtain housing appropriate for the children.

The trial court found that Johnson failed to resolve her housing, substance abuse, and emotional stability issues. The record shows that, over the course of one and a half years, Johnson failed to remedy her substance abuse and emotional stability issues so that the trial court could safely return her children to her care. We are not convinced that the trial court made a mistake when it found that the Department proved MCL 712A.19b(3)(c)(i) and (g) by clear and convincing evidence.

III. THE CHILDREN'S BEST INTERESTS

A. STANDARD OF REVIEW

The trial court must order the parent's rights terminated if it finds from a preponderance of evidence that termination is in the children's best interests.⁵ We review the trial court's determination for clear error.⁶

B. LEGAL STANDARDS

To determine whether termination of a parent's parental rights is in a child's best interests, the court should consider a wide variety of factors that may include "the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home."⁷ The trial court may also consider "the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption."⁸

C. APPLYING THE STANDARDS

Johnson contends that terminating her parental rights was not in the children's best interests. We disagree.

After reviewing the record, we are not definitely and firmly convinced that the trial court made a mistake. Here, the record indicates that, because of her emotional stability and housing issues, Johnson would not be able to provide the children with stability, consistency, and parental guidance that the children's counselor testified was necessary given the unique emotional needs the children had as a result of previous trauma. Johnson put her emotional needs before her

⁵ MCL 712A.19b(5); *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012); *In re Moss*, 301 Mich App 76, 83; 836 NW2d 182 (2013).

⁶ MCR 3.977(K); *White*, 303 Mich App at 713.

⁷ *Olive/Metts*, 297 Mich App at 41-42 (internal citations omitted).

⁸ *White*, 303 Mich App at 714.

children's during parenting time. And, when released from jail, Johnson chose to remain in Illinois rather than return to Michigan to visit with the children in person. Schiefer testified that the daughter told her that she did not feel safe with Johnson and wished to stay with the foster parents; the son wanted his foster parents to go with him to live with Johnson.

The trial court thoroughly considered a variety of factors before concluding that termination was in the children's best interests. It found that the children needed permanency and stability, noting that the children were anxious about their futures. It found that the children made progress in foster care and the foster parents were willing to adopt the children. It considered Johnson's poor visitation history. And it found that Johnson did not make significant progress with her treatment plan.

The record supports the trial court's findings, and we are not definitely and firmly convinced that it made a mistake. We conclude that the trial court did not clearly err when it determined that termination was in the children's best interests.

IV. CONCLUSION

We conclude that the trial court did not clearly err when it found that the Department established statutory grounds to terminate Johnson's parental rights, or when it found that termination was in the children's best interests.

We affirm.

/s/ Amy Ronayne Krause
/s/ Joel P. Hoekstra
/s/ William C. Whitbeck